

**INDEX TO AMENDMENTS TO THE SENTENCING GUIDELINES  
FOR AMENDMENT CYCLE ENDING MAY 1, 2000**

<u>AMDT. NO.</u>	<u>PAGE NO.</u>	<u>ISSUE</u>
<b>1</b>	<b>1</b>	<b>Protected Locations and Protected Individuals.</b> —This amendment addresses a circuit conflict regarding whether the enhanced penalties in §2D1.2 apply only in a case in which the defendant was convicted of an offense referenced to that guideline or, alternatively, in any case in which the defendant’s relevant conduct included drug sales in a protected location or involving a protected individual. The amendment clarifies that the court must apply the offense guideline referenced in the Statutory Index (Appendix A) unless the case falls within the limited stipulation exception set forth in §1B1.2(a). Accordingly, the defendant must be convicted of an offense referenced to §2D1.2 in order for the enhanced penalties of that guideline to apply.
<b>2</b>	<b>6</b>	<b>Implementation of the Sexual Predators Act.</b> —This six-part amendment responds to directives contained in the Act. The amendment: (A) provides enhancements to §§2A3.1, 2A3.2, 2A3.3, 2A3.4, 2G1.1, and 2G2.1 for (i) the use of a computer or Internet-access device with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual activity; and (ii) the misrepresentation of a criminally responsible person’s identity with such intent; (B) provides an enhancement in §§2A3.2 and 2G1.1 for offenses under chapter 117 of title 18, United States Code (relating to the transportation of minors for illegal sexual activity), and makes other related modifications to these guidelines; (C) clarifies, in §§2G2.2 and 2G3.1, that "distribution of pornography" applies to distribution of pornography for both monetary remuneration and a non-pecuniary interest; (D) clarifies the meaning of the term "item" in §2G2.4(b)(2) by indicating that a computer file qualifies as an item and invites an upward departure in any case that involves an unusually large number of pornographic images involving children; (E) references the new offense at 18 U.S.C. § 1470 (relating to transferring obscene matter to a minor) in the Statutory Index (Appendix A) to §2G3.1; and (F) references the new offense at 18 U.S.C. § 2425 (relating to prohibiting the knowing transmittal of identifying information about minors for criminal purposes) in the Statutory Index (Appendix A) to §2G1.1.

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3	30	<p><b>Implementation of the No Electronic Theft Act.</b>—This amendment re-promulgates the temporary, emergency amendment, effective May 1, 2000, as a permanent amendment. The amendment: (A) changes the monetary calculation in §2B5.3 to use the retail value of the infringed item, multiplied by the number of infringing items, except in certain other cases for reasons of impracticality; (B) increases the base offense level in §2B5.3 from level 6 to level 8; (C) provides a two-level enhancement and a minimum offense level of 12 if the offense involved the manufacture, importation, or uploading of infringing items; (D) provides a two-level downward adjustment if the offense was not committed for commercial advantages or private financial gain; (E) provides a two-level enhancement and a minimum offense level of level 13 if the offense involved the conscious or reckless risk of serious bodily injury or possession of a dangerous weapon in connection with the offense; (F) provides that the adjustment in §3B1.3 shall apply if the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item; and (G) provides encouraged upward departures if (i) the infringement caused substantial harm to the reputation of the copyright or trademark owner that is not accounted for in the monetary calculation; and (ii) the offense was committed in connection with, or in furtherance of, the criminal activities of certain organized crime enterprises.</p>
4	35	<p><b>Offenses Relating to Methamphetamine.</b>—Implements the Methamphetamine Trafficking Penalty Enhancement Act of 1998 by conforming the quantities in the Drug Equivalency Table of §2D1.1 for methamphetamine-actual and "Ice" to quantities that trigger the statutory 5- and 10-year mandatory minimum penalties.</p>
5	39	<p><b>Re-promulgation of Temporary, Emergency Telemarketing Fraud Amendment.</b>—This amendment re-promulgates the temporary, emergency telemarketing fraud amendment as a permanent amendment.</p>

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6	40	<p><b>Implementation of the Identity Theft and Assumption Deterrence Act of 1998 and the Wireless Telephone Protection Act.</b>—This five-part amendment responds to the directives contained in these Acts. The amendment: (A) provides a two-level increase and a minimum offense level of level 12 for offenses involving (i) the possession or use of device-making equipment; (ii) the production of, or trafficking in, unauthorized or counterfeit access devices; or (iii) affirmative identity theft; (B) provides a rebuttable presumption that the offense involved more than minimal planning and contains a rule to avoid double counting for sophisticated means based on the same conduct; (C) revises the minimum loss rule and adds the rule to §2F1.1; (D) provides an encouraged upward departure if the offense level does not adequately reflect the seriousness of the offense; and (E) incorporates into §2F1.1 some of the statutory definitions of 18 U.S.C. §§ 1028 and 1029 and broadens some of those definitions for guideline purposes.</p>
7	49	<p><b>Bankruptcy Fraud.</b>—This amendment addresses a circuit conflict regarding whether the enhancement in §2F1.1 for a "violation of any judicial or administrative order, injunction, decree, or process" applies to false statements made during bankruptcy proceedings. The amendment: (A) provides a separate enhancement for false statements made during a bankruptcy proceeding; and (B) clarifies that in non-bankruptcy proceedings, the false statement must have been made in violation of a specific, prior order.</p>
8	52	<p><b>Offenses Relating to Firearms.</b>—This amendment addresses statutory changes made to 18 U.S.C. § 924(c) by the Act to Throttle the Criminal Use of Guns. The amendment: (A) clarifies, in §2K2.4, that the guideline sentence for 18 U.S.C. §§ 924(c) and 929(a) convictions is the minimum term of imprisonment required by the statute and any sentence greater than the minimum is an upward departure; (B) clarifies that the guideline sentence for 18 U.S.C. § 844 convictions is the term of imprisonment required by statute; and (C) makes technical and conforming changes in §§3D1.1 and 5G1.2.</p>

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9	55	<p><b>§2K2.4 and Weapon Enhancements for Underlying Offense.</b>—This amendment addresses a circuit conflict regarding whether a defendant sentenced for a conviction of 18 U.S.C. § 924(c) in conjunction with a conviction for other offenses may receive weapon enhancements in the guidelines for those other offenses. The amendment: (A) clarifies that no weapon enhancement should be applied when determining the sentence for the underlying crime of violence or drug trafficking offense, or for any conduct with respect to that offense for which the defendant is accountable under §1B1.3; and (B) clarifies that defendants who are sentenced pursuant to §2K2.4 should not receive enhancements under §2K1.3(b)(3) or §2K2.1(b)(5) with respect to any weapon, ammunition, or explosive connected to the offense underlying the 18 U.S.C. § 924(c) conviction. The amendment also makes technical and conforming changes to reflect the addition of "brandishing" to 18 U.S.C. § 924(c) by the Act to Throttle the Criminal Use of Guns.</p>
10	58	<p><b>Career Offenders and Offenses Relating to Firearms.</b>—This amendment clarifies guideline application for offenders convicted under 18 U.S.C. §§ 924(c) and 929(a) who might also qualify as a career offender under §4B1.1.</p>
11	60	<p><b>"Brandishing" and Dangerous Weapon.</b>—This amendment: (A) conforms the guideline definition of "brandishing" to the statutory definition codified at 18 U.S.C. § 924(c), which was added by the Act to Throttle the Criminal Use of Guns, and makes conforming changes to relevant guidelines; and (B) clarifies under what circumstances an object that is not an actual, dangerous weapon should be treated as one for guideline application purposes.</p>
12	63	<p><b>Post-Sentencing Rehabilitation.</b>—This amendment addresses a circuit conflict regarding whether a sentencing court may consider an offender's post-offense rehabilitation efforts while in prison or on probation as a basis for a downward departure at re-sentencing following an appeal. The amendment prohibits post-sentencing rehabilitation as a downward departure basis but it does not restrict departures based on extraordinary post-offense rehabilitation prior to sentencing.</p>
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13	65	<p><b>Aberrant Behavior.</b>—This amendment addresses a circuit conflict regarding whether a "single act of aberrant behavior" includes multiple acts occurring over a period of time. The amendment defines the parameters of conduct that may warrant a downward departure based on aberrant behavior.</p>

14	68	<b>Dismissed and Uncharged Conduct.</b> —This amendment addresses a circuit conflict regarding whether a sentencing court can base an upward departure on conduct that was dismissed or not charged as part of a plea agreement. The amendment permits the sentencing court to consider such conduct for departure purposes.
15	71	<b>Technical Amendments Package.</b> —This amendment makes various technical and conforming changes. The amendment: (A) inserts a missing word in §2B5.1; (B) corrects typographical error in the Chemical Quantity Table of §2D1.11 regarding quantities of Isosafrole and Safrole; (C) corrects an omission made during prior Commission’s deliberations on the Comprehensive Methamphetamine Control Act of 1996 by adding a 2-level enhancement in §§2D1.11 and 2D1.12 for environmental damage, and makes conforming changes to §2D1.1; (D) updates the Statutory Provisions of §2K2.1; and (E) updates §5B1.3 and §5D1.3 by including new sex offender condition as a specific mandatory condition rather than in a footnote.